

S. 2343

[Report No. 94-920]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16 (legislative day, SEPTEMBER 11), 1975

Mr. MAGNUSON (for himself and Mr. PEARSON) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

MAY 25, 1976

Reported by Mr. MAGNUSON (for Mr. PASTORE), with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Communications Act of 1934, as amended, with respect to penalties and forfeitures.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 ~~SECTION 4. Section 503(b) of the Communications Act~~
4 ~~of 1934 as amended (47 U.S.C. 503(b)); is amended to~~
5 ~~read as follows:~~

6 ~~“(b)-(1) Any person who—~~

7 ~~“(A) willfully or repeatedly fails to operate a radio~~
8 ~~station substantially as set forth in a license, permit, or~~
9 ~~other instrument or authorization;~~

10 ~~“(B) willfully or repeatedly fails to observe any~~
11 ~~of the provisions of this Act or of any certificate, rule,~~

1 regulation, or order of the Commission prescribed under
 2 authority of this Act or under authority of any agree-
 3 ment, treaty, or convention binding on the United
 4 States;

5 ~~“(1) violates section 347(c) or section 509(a)~~
 6 ~~(1) of this Act; or~~

7 ~~“(D) violates section 1304, 1343, or 1464 of title~~
 8 ~~18 of the United States Code;~~

9 shall forfeit to the United States a sum not to exceed \$2,000.
 10 Each act or omission constituting a violation shall be a sepa-
 11 rate offense for each day during which such act or omission
 12 occurs. Such forfeiture shall be in addition to any other pen-
 13 alty provided by this Act: *Provided, however,* That such
 14 forfeiture shall not apply to conduct which is subject to for-
 15 feiture under title II of this Act: *And provided further,* That
 16 such forfeiture shall not apply to conduct which is subject to
 17 forfeiture under part II or part III of title III or section
 18 507 of this Act.

19 ~~“(2) No forfeiture liability under paragraph (1) of this~~
 20 ~~subsection (b) shall attach to any person unless a written~~
 21 ~~notice of apparent liability shall have been issued by the~~
 22 ~~Commission, and such notice has been received by such per-~~
 23 ~~son or the Commission shall have sent such notice by regis-~~
 24 ~~tered or certified mail to the last known address of such~~
 25 ~~person. A notice issued under this paragraph shall not be~~

1 valid unless it sets forth the date, facts, and nature of the act
2 or omission with which the person is charged, and specifically
3 identifies the particular provision or provisions of the law,
4 rule, regulation, agreement, treaty, convention, license, per-
5 mit, certificate, other authorization, or order involved. Any
6 person so notified shall be granted an opportunity to show
7 in writing, within such reasonable period as the Commission
8 shall by rule or regulation prescribe, why he should not be
9 held liable.

10 ~~“(3) No forfeiture liability under paragraph (1) of~~
11 ~~this subsection (b) shall attach to any person who does~~
12 ~~not hold a license, permit, certificate, or other authorization~~
13 ~~from the Commission unless prior to the written notice of~~
14 ~~apparent liability required by paragraph (2) above, such~~
15 ~~person has been sent a notice of the violation, has been~~
16 ~~given reasonable opportunity for a personal interview with~~
17 ~~an official of the Commission at the field office of the Com-~~
18 ~~mission nearest to the person's place of residence and there-~~
19 ~~after has engaged in the conduct for which notice of the viola-~~
20 ~~tion was sent: *Provided, however,* That the requirement of~~
21 ~~this subsection for a notice of the violation and opportunity for~~
22 ~~a personal interview shall not apply if the person is engag-~~
23 ~~ing in activities for which a license, permit, certificate, or~~
24 ~~other authorization is required or is providing any service~~
25 ~~by wire subject to the Commission's jurisdiction; And pro-~~

1 ~~vided further:~~ That any person who has been sent a notice
 2 of the violation, has been given a reasonable opportunity
 3 for a personal interview and thereafter engages in the conduct
 4 for which the notice was sent shall not be entitled to a further
 5 notice for the same conduct and may be subject to forfeiture
 6 for the initial and all subsequent violations.

7 “(4) No forfeiture liability under paragraph (1) of
 8 this subsection (b) shall attach for any violation—

9 “(A) by any person holding a broadcast station
 10 license under title III of this Act if the violation oc-
 11 curred (i) more than 1 year prior to the date of the
 12 issuance of the notice of apparent liability or (ii) prior to
 13 the date beginning the current license term, whichever
 14 date is earlier, or

15 “(B) by any other person if the violation occurred
 16 more than 1 year prior to the date of issuance of the
 17 notice of apparent liability.

18 “(5) In no event shall the total forfeiture imposed for
 19 the acts or omissions set forth in any notice of apparent
 20 liability issued hereunder exceed—

21 “(A) in the case of (i) a common carrier subject
 22 to this Act, (ii) a broadcast station licensee or permittee,
 23 or (iii) a person engaged in distributing to the public
 24 broadcast signals by wire or engaged in distributing to

the public other program services by wire if such activity
is the subject of Commission regulation, \$20,000;

“(B) in the case of any other person, \$5,000.”.

SEC. 2. Section 510 of the Communications Act of 1934,
as amended (47 U.S.C. 510), is hereby repealed.

SEC. 3. Section 504(b) of the Communications Act of
1934, as amended (47 U.S.C. 504(b)), is amended by
deleting the words “parts II and III of title III and section
503(b), section 507, and section 510” and substituting the
words “title II and parts II and III of title III and sections
503(b) and 507”, and by deleting the phrase “; upon
application therefor,”.

SEC. 4. Any act or omission which occurs prior to the
effective date of this Act and which incurs liability under the
provisions of section 503(b) or 510 as then in effect will
continue to be subject to forfeiture under the provisions of
sections 503(b) and 510 as then in effect.

SEC. 5. The amendments made by this Act shall take
effect on the thirtieth day after the date of its enactment.
That this Act may be cited as the “Communications Act
Amendments of 1976”.

SEC. 2. Section 503(b) of the Communications Act of
1934 (47 U.S.C. 503 (b)) is amended to read as follows:

“(b)(1) Any person who is determined by the Com-

1 mission, in accordance with paragraph (3) or (4) of this
 2 subsection, to have—

3 “(A) willfully or repeatedly failed to comply sub-
 4 stantially with the terms and conditions of any license,
 5 permit, certificate, or other instrument or authorization
 6 issued by the Commission;

7 “(B) willfully or repeatedly failed to comply with
 8 any of the provisions of this Act or of any rule, regu-
 9 lation, or order issued by the Commission under this Act
 10 or under any treaty, convention, or other agreement to
 11 which the United States is a party and which is binding
 12 upon the United States;

13 “(C) violated any provision of section 317(c) or
 14 509(a) of this Act; or

15 “(D) violated any provision of section 1304, 1343,
 16 or 1464 of title 18, United States Code;

17 shall be liable to the United States for a forfeiture penalty. A
 18 forfeiture penalty under this subsection shall be in addition
 19 to any other penalty provided for by this Act; except that this
 20 subsection shall not apply to any conduct which is subject to
 21 forfeiture under title II, part II or III of title III, or section
 22 507 of this Act.

23 “(2) The amount of any forfeiture penalty determined
 24 under this subsection shall not exceed \$2,000 for each vio-
 25 lation. Each day of a continuing violation shall constitute

a separate offense, but the total forfeiture penalty which may be imposed under this subsection, for acts or omissions described in paragraph (1) of this subsection and set forth in the notice or the notice of apparent liability issued under this subsection, shall not exceed—

“(A) \$20,000, if the violator is (i) a common carrier subject to the provisions of this Act, (ii) a broadcast station licensee or permittee, or (iii) a cable television operator; or

“(B) \$5,000, in any case not covered by subparagraph (A).

The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the prohibited acts, committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

“(3)(A) At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof in accordance with section 554 of title 5, United States Code. Any person against whom a forfeiture penalty is determined

1 under this paragraph may obtain review thereof pursuant
2 to section 402(a).

3 “(B) If any person fails to pay an assessment of a for-
4 feiture penalty determined under subparagraph (A) of this
5 paragraph, after it has become a final and unappealable
6 order or after the appropriate court has entered final judg-
7 ment in favor of the Commission, the Commission shall refer
8 the matter to the Attorney General of the United States, who
9 shall recover the amount assessed in any appropriate district
10 court of the United States. In such action, the validity and
11 appropriateness of the final order imposing the forfeiture
12 penalty shall not be subject to review.

13 “(4) Except as provided in paragraph (3) of this sub-
14 section, no forfeiture penalty shall be imposed under this
15 subsection against any person unless and until—

16 “(A) the Commission issues a notice of apparent
17 liability, in writing, with respect to such person;

18 “(B) such notice has been received by such person,
19 or until the Commission has sent such notice to the last
20 known address of such person, by registered or certified
21 mail; and

22 “(C) such person is granted an opportunity to show,
23 in writing, within such reasonable period of time as the
24 Commission prescribes by rule or regulation, why no
25 such forfeiture penalty should be imposed.

1 *Such a notice shall (i) identify each specific provision, term,*
2 *and condition of any Act, rule, regulation, order, treaty,*
3 *convention, or other agreement, license, permit, certificate,*
4 *instrument, or authorization which such person apparently*
5 *violated or with which such person apparently failed to com-*
6 *ply; (ii) set forth the nature of the act or omission charged*
7 *against such person and the facts upon which such charge*
8 *is based; and (iii) state the date on which such conduct oc-*
9 *curred. Any forfeiture penalty determined under this para-*
10 *graph shall be recoverable pursuant to section 504(a) of this*
11 *Act.*

12 “(5) *No forfeiture liability shall be determined under*
13 *this subsection against any person, if such person does not*
14 *hold a license, permit, certificate, or other authorization issued*
15 *by the Commission, unless, prior to the notice required by*
16 *paragraph (3) of this subsection or the notice of apparent*
17 *liability required by paragraph (4) of this subsection, such*
18 *person (A) is sent a citation of the violation charged; (B)*
19 *is given a reasonable opportunity for a personal interview*
20 *with an official of the Commission, at the field office of the*
21 *Commission which is nearest to such person’s place of resi-*
22 *dence; and (C) subsequently engages in conduct of the type*
23 *described in such citation. The provisions of this paragraph*
24 *shall not apply, however, if the person involved is engaging in*
25 *activities for which a license, permit, certificate, or other au-*

1 *thorization is required. Whenever the requirements of this*
2 *paragraph are satisfied with respect to a particular person,*
3 *such person shall not be entitled to receive any additional*
4 *citation of the violation charged, with respect to any conduct*
5 *of the type described in the citation sent under this paragraph.*

6 “(6) No forfeiture penalty shall be determined or im-
7 posed against any person under this subsection if—

8 “(A) such person holds a broadcast station license
9 issued under title III of this Act and if the violation
10 charged occurred—

11 “(i) more than 1 year prior to the date of
12 issuance of the required notice or notice of apparent
13 liability; or

14 “(ii) prior to the date of commencement of the
15 current term of such license,

16 *whichever is earlier so long as such violation occurred*
17 *within 3 years prior to the date of issuance of such re-*
18 *quired notice; or*

19 “(B) such person does not hold a broadcast station
20 license issued under title III of this Act and if the viola-
21 tion charged occurred more than 1 year prior to the date
22 of issuance of the required notice or notice of apparent
23 liability.”.

24 *SEC. 3. (a) The first sentence of section 504(a) of*
25 *the Communications Act of 1934 (47 U.S.C. 504(a)) is*

1 amended by inserting immediately after "recoverable" the
2 following: " , except as otherwise provided with respect to a
3 forfeiture penalty determined under section 503(b)(3) of
4 this Act,".

5 (b) Section 504(b) of such Act is amended (1) by strik-
6 ing out "parts II and III of title III and section 503(b),
7 section 507, and 510" and inserting in lieu thereof "title II,
8 parts II and III of title III, and sections 503(b) and 507";
9 and (2) by striking out " , upon application therefor,".

10 SEC. 4. Section 510 of the Communications Act of 1934
11 (47 U.S.C. 510) is repealed in its entirety.

12 SEC. 5. The amendments made by this Act shall take
13 effect on the 30th day after the date of enactment of this Act:
14 except that the provisions of sections 503(b) and 510 of the
15 Communications Act of 1934, as in effect on such date of
16 enactment, shall continue to constitute the applicable law with
17 respect to any act or omission which occurs prior to such
18 30th day.

A BILL

To amend the Communications Act of 1934, as amended, with respect to penalties and forfeitures.

By Mr. MAGNUSON and Mr. PEARSON

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